IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3004 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

G S R T CORPORATION

Versus

MANIBHAI MANGALBHAI PATEL

Appearance:

1. Special Civil Application No. 3004 of 1999

MR KM PARIKH for Petitioner No. 1

RULE SERVED for Respondent No. 1 - None appears

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 08/05/2002

ORAL JUDGEMENT

#. Heard Mr.K.M.Parikh, learned advocate appearing on behalf of the petitioner Corporation.

#. The petitioner Corporation has challenged the award

passed by the Labour Court, Vadodara in Reference No.744 / 1984 dated 4th February, 1998, wherein the labour court has granted reinstatement with continuity of service and also awarded 50 % backwages of the interim period. RULE has been issued by this Court on 22nd April, 1999 and granted ad-interim relief in terms of para-10[D] which has been confirmed by this Court vide dated 13th August, 1999. Notice of RULE has also been served on the respondent but despite that the respondent has not remained present, nor any advocate seems to have been engaged on his behalf in the present proceedings. Not only that on 13th August, 1999, this Court has also observed that none is present on behalf of the respondent. However, the respondent has not remained present though the notice of interim relief is received by him. Therefore, ultimately this Court has no other option except to decide the matter in absence of the respondent workman.

#. Learned advocate Mr.Parikh on behalf of the petitioner Corporation has submitted that the respondent was working as Driver with the petitioner Corporation and he met with an accident, wherein one girl namely Sushama Christian died in the said accident. On the basis of the accident, report was submitted against the respondent workman and after completion of departmental inquiry, he was dismissed from service on 10th December, 1981. Thereafter, the workman raised dispute in the year 1984 which was referred for adjudication on 10th September, 1984. Mr.Parikh, learned advocate submits that the labour court has committed gross error in granting relief of reinstatement and 50 % backwages of the interim period to the respondent workman. Mr.Parikh, learned advocate has also submitted that the document which is produced at Annexure-B is pay slip of the salary being drawn respondent workman produced by the Corporation. It is therefore submitted that the respondent is working with the Vadodara Municipal Corporation as Driver and the salary of the respondent workman is more than Rs.6700/-. He also submits that the security report received by the Divisional Controller, Vadodara dated 7th September, 1998, wherein it is mentioned that the respondent workman was working as Driver as permanent employee of the Vadodara Municipal Corporation in Firebrigade, Dandiya Bazar since 1983 and the workman has been receiving the salary of Rs.7,000/- per month. It is also pointed out that the respondent workman is residing in the quarter No.1 provided by the Vadodara Municipal Corporation. Therefore, Mr.Parikh, learned advocate submits that the respondent workman after his dismissal, already appointed by Vadodara Municipal Corporation since 1983 and

therefore, the labour court has committed gross error in granting reinstatement and even awarding backwages, which requires to be interfered with by this Court.

#. I have considered submissions made by Mr.Parikh, learned advocate on behalf of the petitioner Corporation. The respondent workman while working with the petitioner Corporation as Driver, met with an accident at Sardarnagar Stand on date 22nd July, 1981, wherein Sushma K. Christian expired during the course of treatment. Chargesheet was served on the respondent workman, against which, no explanation was tendered by the respondent workman. Thereafter, in departmental inquiry one Shri Rathod, ATS was examined in presence of the respondent workman. As per the deposition given by said ATS Shri Rathod before the inquiry officer, wherein the respondent workman was held to be guilty while driving vehicle in negligent manner. The witnesses Bachubhai and Lakhiben were examined in departmental inquiry. Even said witnesses had also deposed before the authority that it was negligence on the part of the respondent workman driver and that is how one girl has expired in the said accident. While pointing out the guilt on the part of the driver respondent workman, it was pointed out that he had not used the rear view mirror and therefore, the respondent driver has been held guilty. The inquiry officer has also considered Panchanama, wherein it was found that wheels of bus run over the body of girl and that is how she died. Explanation tendered by the respondent driver that the girl was given push by any passenger and therefore there was some mistake on the part of said girl while getting down from the bus. However, defence of the driver was not believed by the competent authority. Ultimately, the competent authority has come to the conclusion that misconduct levelled against the respondent workman is found to be proved. The labour court has considered evidence on record and deposition of the reporter recorded in cross examination wherein it was deposed before the authority that instead of driver, the conductor is more liable in the said incident and he also deposed that the driver has not used the rear view mirror and that is how the accident occurred. The labour court has considered that the driver has been acquitted by the Chief Judicial Magistrate but the labour court has come to the conclusion that findings given by the competent authority is littel harsh and unjustified. The labour court has considered that since 1984 the respondent workman remained out of job and he is not gainfully employed and therefore, the labour court has granted 50 % backwages of the interim period. No doubt, the security report was

not produced before the labour court but same is produced before this Court. But fact remains that the respondent workman has not remained present in the proceedings before this Court to rebut said letter produced by the Corporation dated 7th September, 1998. Therefore, this Court has to believe said letter dated 7th September, 1998 produced by the Corporation, wherein security report is on record.

#. In light of above discussion, in view of this Court, the labour court has committed gross error in granting 50 % backwages to the respondent workman when the misconduct is found to be proved against the respondent workman wherein one girl died. More over, the labour court has not imposed any punishment once the misconduct is found to have proved. Mere denial of 50 % backwages cannot be considered to be sufficient punishment and therefore, according to my opinion, looking to the security report dated 7th September, 1998 and considering the conduct of the respondent workman not to remain present before this Court despite of service of notice issued by this Court on two occasions, ordinarily, presumption is against the respondent workman to the effect that he must have been in better employment and therefore only he is not interested in the present proceedings. Considering the fact that the respondent workman is already working with the Vadodara Municipal Corporation in firebrigade since 1983, he is not entitled to any backwages for interim period especially when the misconduct is proved and therefore also, some punishment ought to have been imposed by the labour court on the respondent workman. In view of above facts and circumstances, this Court considers that punishment of stoppage of two increment with permanent effect should be imposed on the respondent workman, will meet the ends of justice.

#. In view of above discussions, this petition is partly allowed. The award passed by the labour court, Vadodara in Reference No.744 / 1984 dated 4th February, 1998 is modified to the effect that the directions given by the labour court granting 50 % backwages of the interim period is hereby quashed and set aside. However, it is further directed to the respondent workman to suffer punishment of stoppage of two increments with cumulative effect. Rest of the directions issued by the Labour Court granting reinstatement with continuity of service in favour of the respondent workman remain intact and not disturbed by this Court. Rule is made absolute accordingly. No order as to costs.

Date : 8-5-2002 [H.K.Rathod, J.]

#kailash#